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and Third-Party Plaintiff DC Comics*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER WOZNIAK,

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT INC.,

Defendant.

Civil Action No. 22-cv-08969 (PAE)

**DECLARATION OF PAUL LEVITZ
IN SUPPORT OF WARNER BROS.
ENTERTAINMENT INC. AND DC
COMICS' MOTION FOR SUMMARY
JUDGMENT**

DC COMICS,

Third-Party Plaintiff,

v.

CHRISTOPHER WOZNIAK,

Third-Party Defendant.

I, Paul Levitz, declare as follows:

1. I am the former President and Publisher of DC Comics, the Third-Party Plaintiff in this suit. I submit this declaration based upon my personal knowledge and/or my review of business records of DC Comics in support of Warner Bros. Entertainment Inc. and DC Comics' Motion for Summary Judgment.

2. I served as DC Comics' President and Publisher from 2001 through 2009. In my position, I supervised DC Comics' day-to-day operations and directed all of DC Comics' publicity, promotional, and licensing activities.

3. Before I became DC's President and Publisher, I served as DC Comics' Executive Vice President and Publisher from 1989 to 2001, Executive Vice President from 1984 to 1989, Vice President of Operations from 1982 to 1984, Manager of Business Affairs from 1980 to 1982, and Editorial Coordinator from 1976 to 1980. I served as editor of several DC Comics titles from 1976 to 1980, including *Batman* and *Detective Comics*, and as an assistant editor of several DC Comics titles from 1973 to 1976.

4. I have also written stories for a number of DC Comics titles, including *Batman* and *Detective Comics*, since 1974.

5. The purpose of this declaration is to provide certain background about DC Comics' Batman character, and other characters and story elements from his universe, as well as facts relating to certain claims and defenses alleged by the parties in this action.

Background: The Creation and Success of DC Comics' Batman Character

6. On March 30, 1939, DC Comics published the first Batman story in *Detective Comics* No. 27. Since that time, Batman, including the Batman character, his alter ego Bruce Wayne, his butler Alfred Pennyworth, his ally Commissioner Gordon, and many villains, including the Riddler and the Joker, has become one of DC Comics' most successful series, and Batman one of the most popular and successful characters in comic book history.

7. Over the past 84 years, DC Comics has created and published hundreds of millions of copies of comic books, newspaper strips, magazines, and graphic novels worldwide containing depictions of, and stories about, Batman and his universe. The material created and

published by DC has also been reprinted and republished across the globe and in other formats in the United States.

8. DC Comics has featured Batman in monthly comics such as *Batman*; *Batman: Gotham Adventures*; *Batman: Gotham Knights*; *Batman: Legends of the Dark Knight*; *Batman Beyond*; and *Detective Comics*, as well as in dozens of limited series, one-shot comics, graphic novels, and special editions. In addition, DC Comics has produced Batman as a syndicated comic strip from 1943-1946, in 1953, and from 1966-1973, and featured him a character in The *World's Greatest Super Heroes* strip in 1978.

9. Between 1943 and 1990, Batman “starred” in four motion pictures and serials released theatrically throughout the world: *Batman* (1943), *Batman and Robin* (1949), *Batman* (1966), and *Batman* (1989). Batman has starred in more than ten theatrical feature films since 1990.

10. Between 1966 and 1990, DC Comics licensed the Batman character to appear in a number of live action and animated television shows broadcast throughout the world, including *Batman* (1966-68), *The Batman/Superman Hour* (1968-69), *The Adventures of Batman* (1969), *Super Friends* (1973-1985) and *The New Adventures of Batman* (1977-78). Batman has appeared in numerous live action and animated television shows broadcast throughout the world since 1990.

11. While updates have been made to Batman throughout the years, he maintains certain iconographic features (for example, his costume) and literary features (for example, his backstory of witnessing the murder of his parents which drives him to a life of fighting crime), such that he has remained distinct and recognizable regardless of the story in which he appears in.

12. At all relevant times, DC Comics and its predecessors-in-interest have owned all right, title and interest in and to all copyrights and trademark rights in the character of Batman, including his literary and graphic depictions. Based on these rights, it has been contrary to law for any third party to make any commercial use of the Batman character in any medium without DC Comics' authorization, and DC Comics has enforced its rights against infringers for decades.

13. DC Comics' predecessors-in-interest include DC Comics Inc., Detective Comics Inc., National Periodical Publications, Inc., and National Comics Publications, Inc.

14. A true and correct copy of *80 Years of Batman: the Deluxe Edition*, which I edited and DC Comics published in 2018, is attached as Exhibit A. This book includes complete copies of numerous Batman comics published from 1939-2014, as well as commentary from prominent individuals across a variety of fields and industries detailing the history of Batman. These comics are a representative sample of many thousands of Batman works showing the above-referenced iconographic and literary features over the decades, and the commentary confirms the distinctiveness and delineation of these features. The comics and commentary also exemplify the other distinctive characters and story elements from Batman's universe.

15. A true and correct copy of *Batman: The Complete History*, written by Les Daniels and published by DC Comics in 1999, is attached as Exhibit B. Exhibit B details Batman's history through 1999 and, as with Exhibit A, similarly shows that Batman's character, as well as that of the other story elements and characters from his universe, have been distinct and delineated for decades.

16. A true and correct hard copy box set containing DVDs for the live television series *Batman*, originally aired from 1966-1968, has been filed with the Court and is Exhibit C to this declaration. Exhibit C is just one example of how Batman has appeared in media. Though

updates were made in this depiction, he, along with the other elements and characters from his universe, remain distinct and delineated.

17. A true and correct hard copy box set containing DVDs for four Batman films, *Batman* (1989), *Batman Returns* (1992), *Batman Forever* (1995), and *Batman & Robin* (1997), has been filed with the Court and is **Exhibit D** to this declaration. Exhibit D demonstrates that Batman, along with other elements and characters from his universe, remained distinct and delineated across four films, despite the films being helmed by two different directors and Batman being portrayed by three different actors.

Batman's Story and Characteristics

18. Batman has certain literary characteristics that have remained constant throughout many thousands of works. For example, Batman's origin story, in which a young Bruce Wayne (Batman's alter ego) witnesses the murder of his mother and father, first appeared in *Detective Comics* No. 33, cover dated November 1939, and has been a consistent literary feature of the Batman character. (See Ex. A at 144-45, 268-69, 300-01; Ex. B at 31.)

19. Similarly, the following literary characteristics have been consistent and delineated throughout Batman's history: he is a detective and crime fighter without superpowers; who wears a distinctive cowl; has an alter ego of Bruce Wayne; and refrains from killing his enemies despite them attempting to kill him. (See, e.g., Ex. A at 24-30, 87-99, 173-188, 244-45.)

Other Story Elements and Characters from Batman's Universe

20. The Riddler first appeared in *Detective Comics* No. 140, cover dated October 1948. The Riddler is depicted as a Batman villain with an alter ego of Edward Nigma who antagonizes Batman by committing crimes that incorporate riddles and puzzles and uses question marks as his motif and calling card. (See, e.g., Ex. A at 87-99.) For example, in the first issue he

appears in alone, the Riddler traps a “wealthy art[] lover” named “Mr. Eagle” and says to Batman: “That gag is slowly smothering Mr. Eagle! Unless you solve the puzzle and free him quickly, he’ll die!” (*See id.* at 95.) The Riddler has appeared in numerous Batman titles and media versions since 1948, and while certain updates have been made to the character, he has retained these delineated characteristics. (*See, e.g.*, Ex. B at 57, 58, 99, 103, 110; Ex. C at Season 1, Episode 1 (“Hi Diddle Riddle”); Season 1, Episode 11 (“A Riddle a Day Keeps the Riddler Away”); Season 3, Episode 2 (“Ring Around the Riddler”); Ex. D (*Batman Forever* (1995)).)

21. Story elements and characters from the Batman universe that have appeared in thousands of Batman titles throughout the years include Gotham City (*see, e.g.*, Ex. B at 31, 157), Commissioner Gordon (*see, e.g., id.* at 33, 157), Barbara Gordon (*see, e.g., id.* at 113, 163), Harley Quinn (*see, e.g. id.* at 186), the Batcave (*see, e.g., id.* at 136, 159), the Batmobile (*see, e.g., at* 59, 111 159), Alfred (*see, e.g., id.* at 57, 99, 157), and the Joker (*see, e.g., id.* at 39-42, 103, 112, 160-63). As with Batman and the Riddler, though some variations and updates have been made throughout the years, these story elements and characters have been consistently recognizable and delineated, especially when appearing with Batman. For example, while Frank Miller, in his *Year One* comic published in 1987, depicted a “bleak” Gotham City “colored by corruption” with the “cops, criminals, and members of high society all a part of the pattern,” Gotham is still recognizable as the home of Batman. (*See id.* at 155-57.)

DC Comics and Christopher Wozniak

22. While freelance writers have been permitted to contribute stories about Batman for publication, DC Comics generally did not accept unsolicited submissions for stories from freelancers during my time as publisher. Moreover, DC Comics did not allow any freelancers to

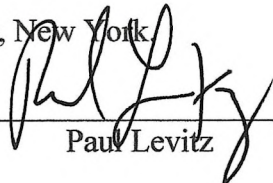
independently publish or otherwise make commercial use of any works that include Batman characters without its permission.

23. In my position as publisher, I would have been made aware of any unusual instance of the editors desiring to publish a story submitted by a freelancer unsolicited. I have met dozens if not hundreds of freelancers who performed work for DC Comics. Though I have a vague recollection of Mr. Wozniak's name from my time at DC Comics, I have never seen any story written by Mr. Wozniak who worked with us as an artist.

24. Furthermore, DC Comics never provided consent – written or otherwise – for Mr. Wozniak to create or publish any story using characters and story elements from Batman's universe.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of November 2023 in Cortlandt Manor, New York.


Paul Levitz